

<b>COMPLIANCE BOARD OPINION No. 97-11</b>
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May 29, 1997

*Mr. Conrad Potemra*

The Open Meetings Compliance Board has considered your complaint dated April 11, 1997, in which you allege that the Commissioners of Poolesville violated the Open Meetings in the conduct of their meeting on March 31, 1997. For the reasons stated below, the Compliance Board concludes that the Commissioners did not violate the Act by holding their meeting at Town Hall. The Board further finds that the notice of the meeting said to have been posted by the Commissioners complied with the Act. The Board concludes, however, that the Commissioners violated the Act by issuing an inadequate statement prior to the closed portion of the meeting.

Two of the four items in your complaint relate to the Commissioners' holding their March 31 meeting in a facility, Town Hall, that is not barrier-free. As we understand the situation, the meeting was originally to have been held at the Poolesville High School, a barrier-free facility. The meeting was moved to Town Hall, however, after the Commissioners learned that custodial staff were on vacation and therefore unavailable to open the high school.<sup>1</sup>

In Compliance Board Opinion No. 97-9, at 3 (May 20, 1997), we discussed the manner in which the Open Meetings Act addresses the issue of accessibility to persons with disabilities. While the Compliance Board strongly encourages public bodies to hold meetings in facilities that conform to the standards of the Americans with Disabilities Act, the Board cannot conclude that the Open Meetings Act is violated solely because a meeting is held in a facility that is not barrier-free.<sup>2</sup> Given the circumstances surrounding the March 31 meeting, we would be particularly reluctant to conclude that the holding of the meeting at Town Hall was itself a violation. The Commissioners had intended to hold the meeting in a barrier-free facility but

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<sup>1</sup> This information comes from the timely response submitted on behalf of the Commissioners by Mr. Charles S. Rand, the Town Attorney.

<sup>2</sup> As mentioned in Compliance Board Opinion 97-9, the Board does not have authority to render opinions about the ADA.

were unexpectedly prevented from doing so. Moreover, according to Mr. Rand, had any individual with a mobility impairment sought to attend the meeting at Town Hall, the Commissioners would have ensured that the individual could gain admittance. The Compliance Board finds no violation.

You also complain that the notice of the March 31 meeting did not reflect the Commissioners' intention to hold a closed session. In particular, you asserted that "there was no notice of an executive session on the door of Town Hall." Under §10-506(b)(3), of the State Government Article a notice, "if appropriate," is to "include a statement that a part or all of a meeting may be conducted in closed session." The phrase "if appropriate" refers to an expectation by the public body at the time that the notice is issued.

There is evidently a factual dispute about the notice, because Mr. Rand reports the Town Manager's statement that both the original notice (when the meeting was intended to be held at the high school) and a revised notice (reflecting the change of location to Town Hall) reflected an intention to "meet in executive session ...." The Compliance Board is not able to resolve disputed issues of fact. *See* Compliance Board Opinions 94-8 (October 26, 1994) and 94-1 (March 22, 1994). If indeed a notice with the reference to "executive session" was posted in the customary place on the door of Town Hall, then the notice requirement of the Open Meetings Act was satisfied.

Finally, your complaint objects to the reason given by the Commissioners for adjourning into closed session: "To receive an update on the acquisition on real property for a public purpose by the Public Building Committee." You phrase your objection as follows: "[T]his statement is so vague that it does not provide any information as to the intent of the meeting. It could be to discuss buying land for Town Hall or parks, discuss a well house for a future well, or discussing a current or future building for Town Hall."

Mr. Rand responds that you and most other Poolesville residents "are aware that the Commissioners are attempting to acquire a site for new Town Hall. The executive session was convened for this purpose. No site has been selected and negotiations have not commenced. This is precisely the purpose for which the acquisition of real property exception was designed.... It is clearly unthinkable for the public, and thereby the respective property owners, to know which property is favored so that such owner may increase his price and response."

Mr. Rand's comment accurately describes the basis under the Act for the Commissioners to have closed the meeting. Under §10-508(a)(3), a public

body may meet in closed session to “consider the acquisition of real property for a public purpose and matters related directly thereto.”

The need for secrecy about the particulars of potential property acquisition, however, does not justify the Commissioners’ failure to provide any elaboration beyond the words of the exception itself. The Act requires that the statement made prior to closing a meeting is to include “the reason for closing a meeting, including a citation of the authority under this section, and a listing of the topics to be discussed.” §10-508(d)(2)(ii). The Compliance Board sees no reason why the Commissioners could not have stated that the topic of the closed session was to be a discussion of potential sites for a new Town Hall and the reason for closing was to avert speculative increases in land prices. This limited degree of disclosure would not cause the harm identified by Mr. Rand but would comply with the Act. The Commissioners’ failure to do so was a violation.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.  
Courtney McKeldin  
Tyler G. Webb